



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF AUGUST 26, 2004**

CALL TO ORDER: Vice-Chairperson Wieckowski called the meeting to order at 7:00 p.m.

PRESENT: Vice Chairperson Wieckowski, Commissioners Harrison, King, Lydon, Sharma

ABSENT: Chairperson Weaver, Commissioner Natarajan

STAFF PRESENT: Jeff Schwob, Planning Director
Larissa Seto, Senior Deputy City Attorney II
Kathleen Chu, Senior Civil Engineer
Kathleen Livermore, Senior Planner
Barbara Meerjans, Associate Planner
Avan Gangapuram, Associate Planner
Cliff Nguyen, Planner II
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

Vice-Chairperson Wieckowski congratulated Mr. Schwob on his appointment as City Planning Director.

APPROVAL OF MINUTES: Regular Minutes of July 22, 2004 were approved with the following corrections:

Page 25, Vice-Chairperson Wieckowski speaking, second bullet: “. . . the City was currently under no obligation to require that a project be rebuilt.”

Pages 29 and 33 motions, second paragraphs: “Prior to considering the remaining recommendations, the City Council consider obtaining a third-party review of the principles that were used to arrive at the recommended Toe of the Hill line and the physical drawing of that line.”

CONSENT CALENDAR

It was agreed that Item Numbers 2, 3, and 6 would be added to the consent list.

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 2, 3, 4, 6 AND 7.

IT WAS MOVED (HARRISON/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 2, 3, 4, 6 AND 7.

- Item 2. BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059)** – to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area.

Vice-Chairperson Wieckowski announced that a letter from the applicant had been received by the Commission. He confirmed that no presentation was planned.

Planning Director Schwob stated that he was correct and that the letter was to be included in the public record.

HOLD PUBLIC HEARING;

AND

DENY THE APPLICATION ON ITS MERITS (BASED ON THE INFORMATION AND EXHIBITS IDENTIFIED IN THIS REPORT AND PRESENTED DURING THE PUBLIC HEARING).

- Item 3. GREEN CHERRY COMMON – 38723 Cherry Lane – (PLN2004-00078)** – to consider a Preliminary and Precise Planned District for 13 single-family attached dwelling units on .77 acres located at Central Planning Area. This project is categorically exempt from review under CEQA pursuant to Section 15332 (In-Fill Development Projects).

HOLD PUBLIC HEARING;

AND

RECOMMENDED THAT THE CITY COUNCIL FIND THAT THE PROJECT IS EXEMPT FROM CEQA PURSUANT TO SECTION 15332. IN-FILL DEVELOPMENT PROJECT;

AND

FIND PLN2004-00078, AS PER EXHIBIT "B" (PRELIMINARY AND PRECISE SITE PLAN, FLOOR PLANS, ELEVATIONS, LANDSCAPE PLAN), IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND PLN2004-00078, AS PER EXHIBIT "B" (PRELIMINARY AND PRECISE SITE PLAN, FLOOR PLANS, BUILDING ELEVATIONS AND CONCEPTUAL LANDSCAPING), FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

RECOMMEND THE CITY COUNCIL APPROVE PLN2004-00078, AS PER EXHIBIT "A" (REZONING); EXHIBIT "B" (PRELIMINARY AND PRECISE SITE PLAN, FLOOR PLANS, ELEVATIONS, LANDSCAPE PLAN); AND FINDINGS AND CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "C" AND EXHIBIT "E" (MATERIAL AND COLOR SAMPLE BOARD).

- Item 4. KAISER BIO-MEDICAL DOCK PAD – 39400 Paseo Padre Parkway (PLN2004-00198)** - to consider a Finding for Site Plan and Architectural Approval through a Planned District Minor Amendment for a 476-square foot modular reception building, a covered walkway and a mobile trailer for diagnostic bio-medical procedures at an existing medical facility (Kaiser Permanente) located in the Central Planning Area. This project is categorically exempt from review under CEQA pursuant to Section 15301 (e) (Existing Facilities).

CONTINUE TO SEPTEMBER 23, 2004.

- Item 6. STRATFORD SCHOOL – 5301 Curtis Street – (PLN2004-00221)** – to consider a Conditional Use Permit to allow the operation of a private preschool and elementary school for up to 440 students in the buildings of the former Marshall School site. This project is categorically exempt from review under CEQA pursuant to Section 15301 (Existing Facilities).

Vice-Chairperson Wieckowski announced that he had received a Stratford School Arrival and Departure Schedule for the Fremont Campus and that it would be included in the public record.

HOLD PUBLIC HEARING;

AND

FIND THAT THE PROPOSED PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PURSUANT TO SECTION 15301, EXISTING FACILITIES;

AND

FIND THAT THE PROPOSED PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THE PROJECT CONFORMS TO THE GOALS AND POLICIES AS ENUMERATED IN THE STAFF REPORT AND FINDINGS EXHIBIT ADOPTED/RECOMMENDED HEREWITH;

AND

APPROVE PLN2004-00221, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".

- Item 7. GRIMMER RESIDENCE PRIMARY HISTORIC RESOURCE - 4032 Bay Street – (PLN2005-00016)** - to consider a General Plan Amendment application to include an historic property on the City's Primary Historic Resource list located in the Irvington Planning Area. The proposed General Plan Amendment is exempt from CEQA pursuant to Guideline Section 15061(b)(3), and any future modifications to the building are categorically exempt from CEQA per Guideline Section 15331, Historic Resource Restoration / Rehabilitation.

HOLD PUBLIC HEARING;

AND

FIND PLN2005-00016 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS DISCUSSED WITHIN THE STAFF REPORT;

AND

RECOMMEND THAT THE CITY COUNCIL APPROVE PLN2005-00016 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FROM COMMUNITY COMMERCIAL CENTER TO COMMUNITY COMMERCIAL CENTER PRIMARY HISTORIC RESOURCE (C-C (H)) IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN AMENDMENT EXHIBIT).

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 1.** **LINDA VISTA - 2650 Bruce Drive – (PLN2004-00233)** - to consider a Rezoning from R-1-8 (Single Family Residential - 8,000 square foot minimum lot size) to R-1-6 (Single Family Residential – 6,000 square foot minimum lot size) for six acres of property in the Mission San Jose Planning area. A Mitigated Negative Declaration has been prepared and circulated for this project. (Continued from July 22, 2004.)

Adam Tennant, Summerhill Homes, introduced John Revels, Wilson Hue and Ray Hashimoto. The project would consist of 32 single-family, detached homes, which would include five below market rate homes. This type of project was encouraged by the General Plan. The current General Plan designation was low density residential and would allow four to six units per acre. Summerhill was proposing 5.3 homes per acre at the midpoint of the designation. This proposal was within the General Plan designation of the surrounding neighborhood. Informal meetings led to plans for 36 homes presented at a neighborhood meeting in December 2003, then 32 homes in June 2004. Some of the neighborhood comments would be incorporated into the site plan to be heard in the future. The traffic study showed that the use by Summerhill would be a less intense use than when the school was operating. The company had received regional architectural awards for two other projects.

Commissioner Sharma asked what the net difference in units would be between R-1-8 and R-1-6 zoning and how many below market rate units would be affected.

Mr. Tennant replied that the staff report stated that six lots would be the total difference with one less below market rate unit.

Vice-Chairperson Wieckowski opened the public hearing.

Debra Pearson, residing directly across from the Linda Vista site, stated that a message from her father was to “just leave everything intact the way it was.” The neighborhood was very small and open space needed to be included within the project to make up for the play areas that would no longer be available on the school grounds. The nearest open space had to be accessed by crossing Washington Boulevard. Even a small patch of grass would be appreciated.

Peter Zhou stated that he had e-mailed comments to Planning Director Schwob, along with additional comments that he gave to the recording clerk. He believed additional traffic and overcrowded schools would be generated by this project, which added 30 percent more homes to the neighborhood. Parents would be significantly impacted by the need to transport their children to other schools. The staff report did not detail how the trees would be surveyed and how their removal would be decided, which, in his opinion, should be included in the EIR. Any tree removal would cause a significant environment impact to the surrounding neighborhood. He asked how this project would impact the wild turkeys that were seen on the property. The increase in fence height would physically isolate the new development from the rest of the neighborhood and would not be aesthetically pleasing. People in the neighborhood who lived further than 300 feet away from the site would be impacted by the project and should have been notified.

Commissioner Sharma recalled that it was the school district that had decided to close the school and to put this property on the market. Obviously, something would be built on this site. This rezoning would allow six extra houses to be built.

Mr. Zhou replied that more young families had moved into the neighborhood by buying homes from “empty nesters” and their children had filled up the local school, which was a misjudgment by the school district. He disagreed that six extra houses would be built. The rezoning would allow eight more houses to be built. He preferred that the school stay as it

was. If that was not possible, a park would be appropriate. If that was not possible, keep the current zoning and incorporated a playground into the project.

Commissioner Sharma rephrased the speaker's comments and noted that the Planning Commission had no responsibility for the school district's properties and could not be blamed for what it chose to do with their properties. The City was fiscally unable to purchase the school property for use as a park. Developing the property for new homes was one of very few options. He asked if some kind of open space within the project was made available to the neighborhood, would the speaker approve of the higher density zoning?

Mr. Zhou replied that he would not approve of a higher density, as the project should have the same density as the rest of the neighborhood. The existing neighborhood lots were approximately 8,000 square feet versus 6,000 square feet for the new lots. More than 90 percent of the existing homes were single stories, whereas, the new homes would all be two-stories with a 30-foot height, which would ruin the beauty and view of the neighborhood.

Jerold Langenbach believed that the rezoning would affect the quality of life in the neighborhood. Adding six to eight more houses would negatively impact the existing residents. He felt that the residents were involved with a "bait and switch" project. At first a school was on the property, then he heard there would be a park, then no park, then houses at a density of R-1-8, and now it was at R-1-6 with a request for higher than allowed fencing. Some of his neighbors believed that it would do no good to attend this meeting, because everything was already decided. However, he did not agree and that was why he was speaking in opposition to the rezoning.

Commissioner King asked how long the speaker had lived in the neighborhood and if there was a neighborhood association. He asked if he had talked with the neighbors about this issue.

Mr. Langenbach replied that he had lived in this community that was located above the old pickle factory for 27 years and that no association existed. The neighbors he had spoken with wanted the "status quo" and did not want the site rezoned. He knew of no one who agreed with the rezoning. He believed the rezoning was due to greed, as Summerhill had originally planned to develop the property at R-1-8.

Commissioner King asked that staff address the speaker's comments and also asked if this rezoning would meet low income housing requirements.

Planning Director Schwob stated that all new development projects within the City were required to provide 15 percent of their ownership units, targeted toward moderate income households. However, this rezoning would provide conformance with the General Plan.

Commissioner King asked if the General Plan "required" the developer to provide this density.

Planning Director Schwob replied that the General Plan "encouraged" the developer "to at least meet the midpoint" concerning densities below 6.5 units to the acre. This development was in the four to six unit/acre range. Densities higher than 6.5 units to the acre are required to meet the midpoint of the density range.

Commissioner King agreed that quality of life was important, but it did not see that "greed" was a part of this zoning decision.

Mr. Langenbach believed that R-1-8 zoning was first discussed relating to this development. He wondered how this compared to the hillside lots that were much larger.

Jack Knutson stated that he had been a neighborhood resident for ten years and concurred with the speakers before him who were eloquent and made their points well. "Encouragement" was not "requirement" and he asked that the zoning stay R-1-8. He believed:

- The 32 homes would destroy a 45-year old neighborhood
- The existing home values would be lowered
- The high-density was inappropriate
- The traffic impact would be more than was created by the school

Commissioner Lydon stated that he had read the speaker's letter and asked if he could expand upon his points made above. He asked if homes would be noisier than a school was.

Mr. Knutson believed that the neighborhood would become crowded, congested and noisy. He believed a high-density community would be noisy 24 hours a day.

Commissioner Lydon understood that other infill projects within the City had increased the surrounding property values. Why did he believe his property value would decrease?

Mr. Knutson replied that high-density, lower quality, two-storied homes that were out of character with the rest of the neighborhood, along with the loss of open space, would bring down the property values.

Commissioner Lydon noted that two story homes were in the neighborhood.

Mr. Knutson admitted that his home had a second story addition.

Commissioner Sharma asked what the existing home prices were in the speaker's neighborhood. He wondered if anyone would be able to afford homes like those in the future.

Mr. Knutson replied that he was currently living out of the area but guessed that homes in the neighborhood probably sold for 600,000 dollars or more.

Commissioner Sharma asked him if he believed that people who could afford 500,000-dollar homes would play loud music and be noisy.

Mr. Knutson stated that he did. He also believed that the character of the neighborhood would be gone when the school was gone.

Allen Sprague stated that his street overlooked the old winery and had lived in his home for 40 years. He understood that the development was originally planned to be much larger, as evidenced by the shortened streets. Leaving the zoning at R-1-8 was the best solution for this property.

Mr. Tennant addressed the comments made by the neighbors:

- Summerhill's original submittal was for 36 homes. They had never planned a development for R-1-8 zoning. They were now planning to construct 32 homes on lots that had been increased from 5,000 square feet minimum to 6,000 square feet minimum.
- The lot grade levels would conform to the grades across the street on Bruce Drive, which, currently, were approximately eight feet higher than the existing lots across the street.
- The fence exception was because the grade would be about two feet lower. The fence heights would look no higher to the neighbors than the existing fences.

- The traffic impacts were discussed in the staff report and were not performed by Summerhill.

Commissioner Harrison asked if the project would “pencil out” if the R-1-8 zoning was left unchanged. He asked the applicant to address the loss of open space with the loss of the school

Mr. Tennant stated that the R-1-6 zoning was needed to make a profit now that they had decided to construct four less homes than originally planned. The logistics of a park would not work within this development, as he had advised the neighbors during one of the meetings. However, the issue of the park being an attractive nuisance was brought up by one of the neighbors.

Vice-Chairperson Wieckowski displayed the City’s Design Guidelines for Small Lot Single Family Residential Developments and asked why the suggested lot size of 4,000 to 6,000 square feet had not been adhered to, which would have encouraged more than 36 homes to be built in the development.

Mr. Tennant had considered the Small Lot Guidelines; however, after meeting with the neighbors, it was decided to make the lots and setbacks larger than would be possible when following the Small Lot Guidelines.

Vice-Chairperson Wieckowski stated that he had walked from the proposed Linda Vista Development to the proposed BART station site. The City had a duty to provide housing near transit corridors for future City residents. Had the applicant considered the City’s public policy concerning infill projects near anticipated transit corridors?

Mr. Tennant stated that pleasing the neighbors was in direct conflict with a higher density, more transit oriented project that Vice-Chairperson Wieckowski was speaking of.

Commissioner Lydon recalled that some speakers had spoken of the “fence/wall” issue and asked the applicant to address their concern.

Mr. Tennant replied that the new lot pads would be at a lower grade, which would make the fence high on the new owner’s side of the fence, but would be at standard height on the existing grades of the existing homes.

Commissioner Lydon clarified that if someone jumped over the fence from an existing lot, the fall to the ground on the new lot would be greater, because the grade would be lower.

Commissioner King asked if it would not be economically feasible to develop this property with the current zoning.

Mr. Tennant agreed that it would not.

Commissioner King asked staff if “the school was gone, the park was gone and somebody’s going to buy this and develop this.”

Planning Director Schwob replied that he was correct. The school district offered surplus sites first to nonprofit builders for affordable housing and to other public agencies or entities for parks or other public purposes. If no one came forward, the property was put up for bid on the open market, which was what had occurred with this site. A church had bought one of the school sites for a church building and the Stratford School, just approved on the consent calendar was to be used for a private school.

Commissioner King asked how much would the new homes be sold for.

Mr. Tennant anticipated that the homes would be sold for approximately 1.2 million dollars and five of the 32 homes would be available to below market buyers.

Commissioner King asked if the below market rate homes were planned to be the same size and style as the other homes.

Mr. Tennant replied that the architectural style would be similar, but the below market rate homes would be about 2,000 square feet.

Planning Director Schwob added that the sales price for a house accommodating a family of four would have to be about 304,000 dollars to qualify for the below market rate homes.

Commissioner Sharma asked if the market value of the five homes was 1.2 million dollars and would the lot sizes of the larger homes be larger. He asked, for the record, if the zoning was not changed, would the project be feasible.

Mr. Tennant stated that the below market rate homes would be approximately 2,000 square feet and the market rate homes would be above 3,500 square feet. The average lot size would be above 6,500 square feet and, typically, the larger homes would be built on the larger lots. If the zoning was not changed, his company would not be interested in moving forward with this project.

Commissioner Harrison asked if the purchase of the property by the applicant was contingent upon the rezoning. He stated that he had just moved into a home that was part of an infill project in Glenmoor and built by Summerhill approximately five years ago. He asked if this project was similar, since living in one of their projects gave him some idea of what this neighborhood would look like in five years. He asked if the scope of this project would impact the existing neighborhood was similar to how the infill project had impacted his new neighborhood.

Mr. Tennant replied that purchasing the property did not depend upon rezoning.

John Revels, Summerhill Homes, recalled that the lot sizes in Glenmoor were a minimum of 5,000 square feet with home sizes of 2,500 to 3,300 square feet, so from a scale perspective, Linda Vista lots would be larger with larger homes. In general, the streetscapes of the two neighborhoods would be similar.

Mr. Tennant added that the architectural style of this project would be different from Glenmoor.

Commissioner Harrison asked if the lots and homes of this project were closer to the Glenmoor level, would the project pencil out to allow to some open space and a little less impact on the community.

Mr. Tennant stated that the company had "already gone down that path" and they had decided to build less rather than more homes.

Vice-Chairperson Wieckowski closed the public hearing.

Commissioner Lydon stated that a neighborhood resident had brought information to him that indicated that the land the school had been built upon had been donated by a family whose intent was that it always remain a school.

Senior Deputy City Attorney Seto replied that, generally, land donated with a specific restriction stayed with the land for only 30 years, unless the donator renewed the restriction

before the end of the 30-year period. Staff assumed that, because the school district controlled the property when that span of time had passed and the property had been put up for sale, the 30-year period had expired.

Commissioner Lydon understood that the property had been donated more than 30 years ago.

Commissioner King asked if this property had been sold to Summerhill Homes.

Senior Deputy City Attorney Seto replied that she understood that the property had been surplus by the school district.

Commissioner King asked what "surplus" meant.

Senior Deputy City Attorney Seto explained that when a government agency had property it no longer had use for, it could surplus the property using various procedures required by state law. She described the same process as Planning Director Schwob had described earlier in the hearing. There was no requirement that the government agency had to sell the surplus property at anything less than fair market value. Staff had no knowledge of the details of the transaction.

Commissioner Sharma asked if the zoning was not changed, would it, essentially, add 100,000 dollars to the 1.2 million-dollar price of each new home in the project.

Planning Director Schwob reiterated that the applicant had stated that he expected to market each home in the 1.2 million dollar range minus the below market rate units, which would be restricted for 30 years and renewed every time the property was sold, if sold before the 30 year period expired. If the current zoning remained in place and this developer chose not to move forward with the project, then some other developer would likely build larger houses on larger lots, which would be more out of scale with the current neighborhood and would command higher prices. And one less below market rate unit would be available.

Commissioner Sharma asked if the applicant was legally required to provide five below market rate units or required to provide 15 percent of the total units.

Planning Director Schwob stated that 15 percent of the total units came to 4.8 units, which were rounded up when 20 or more units were planned for a development and rounded down with less than 20 units.

Commissioner King asked what the average square footage was of the existing homes in the neighborhood.

Planning Director Schwob ventured that the square footage was less than 2,000 square feet.

Commissioner King summarized that the below market rate homes would be approximately 2,000 square feet and the 1.2 million dollar homes would be about 3,000 square feet and more.

Commissioner Harrison asked if the zoning was changed, would it run with the land no matter who owned it and would this project come back to the Commission for review at a later date. Would any other developer be able to do anything they wanted without Commission review?

Planning Director Schwob stated that a tentative tract map application would come back to the Commission for approval. As this would not be a planned district, the Planning

Commission would not review the design of the homes. Uses allowed within the R-1-6 and R-1-8 districts remain identical.

Commissioner King thanked the speakers for bringing their concerns before the Commission and stated that he was perplexed. He agreed with Vice-Chairperson Wieckowski that the City had an obligation to protect the existing homeowners, along with providing housing for future homeowners. In his opinion, the existing homeowners were more important, if a decision had to be made between the two. It seemed to him that this project would increase, rather than decrease, the value of the existing homes, although he agreed that it was “nice to have a school in the neighborhood.” Since the Commission had nothing to do with decisions made by the school district, he felt this proposal was fair. He would approve the application, as long as the Commission would review subsequent applications by this applicant.

Commissioner Sharma wondered if it was possible to get an extra below market unit from the developer. It was obvious that the neighborhood did not want this “so-called high density” project. However, the rezoning would add six additional houses. The school would not stay a school and the City could not afford to buy the property to convert it to a park.

Commissioner Lydon recalled that the applicant had stated that the change of zoning would allow him to build six additional homes. However, one of the speakers stated that it would be eight additional homes and he asked which number was correct.

Planning Director Schwob replied that up to eight more units would be allowed; however, the applicant had proposed six more units.

Vice-Chairperson Wieckowski summarized that, if the zoning was changed and this applicant did not move forward with six extra lots, a possible different applicant could propose more lots.

Commissioner Lydon asked if this proposal was actually a “bait and switch-type thing,” as alluded to by one of the homeowners.

Commissioner Sharma asked if a condition could be made to keep the additional lots to six rather than the allowed eight.

Planning Director Schwob replied that a rezoning action could not be conditioned.

Commissioner King asked if any applicant had to bring a tract map back to the Commission for approval, regardless of the rezoning.

Planning Director Schwob stated that distinct findings had to be made by the Commission to approve or disapprove any subdivision map. However, findings for denial could be difficult, if the subdivision map complied with all zoning requirements.

Commissioner Harrison stated that he was torn, since he lived in a home that was probably part of the same lightening rod in his neighborhood five years ago that this project was. None of the home prices in Glenmoor were driven down by the Summerhill Homes project there. He decided that he would approve the rezoning with a caveat to the developer that he would not approve the tract map if it negatively impacted the neighbors. As small as it might be, it was appropriate to include some kind of open space. Basketball courts and grassy knolls did not take up much space.

Planning Director Schwob stated that the action taken by the Commission would be a recommendation to City Council to approve or disapprove rezoning this site. Under procedures governed by state law, a majority vote of the total Planning Commission was

needed. Four votes were needed to make a recommendation to City Council. If there were less than four votes for approval, the item would be denied and the applicant would have the right to appeal.

Vice-Chairperson Wieckowski observed that “high density” was a catch phrase used by the speakers for something that was bad. The area was designated for one of the lowest density ranges in the General Plan. Development of single-family housing was typically at 5 to 7 units per acre. It seemed that a tinkering was going on between 5 and 5.3 units/acre. This “boogeyman of high density” just barely meets the city’s goal for encouraging the midpoint density. Even if this project consisted of 4,000 square foot lots, it would not be considered high density, under the City’s definition. He was looking at it differently than some of the other Commissioners. Homes built fifty years ago at a probable cost of 12,000 dollars were now worth upwards of 500,000 dollars, so property being devalued by this project was absurd. The 2,000 square foot home on a 4,000 square foot lot that Commissioner Harrison now lived in would probably sell for upwards of 600,000 dollars. If the Commission recommended a higher density than the applicant was asking for, the new houses would be smaller and more compatible to the existing residences. He would have preferred that this project had followed the Small Lot Guidelines.

Commissioner King asked if, as staff had suggested, the zoning was changed, any applicant could come back to the Commission with as many as eight extra lots and the Commission could probably do nothing about it, if it complied with the zoning regulations.

Planning Director Schwob replied that the Commission could always propose a finding based upon the belief that it did not comply with the zoning and/or did not meet the findings under the Subdivision Map Act. It could ultimately end up in court, if the justification for denial was not sound.

Commissioner King stated that Planning Director Schwob’s comments bothered him. He was inclined to side with the neighbors, regardless of Vice-Chairperson Wieckowski’s argument for smaller lots.

IT WAS MOVED (HARRISON/LYDON) AND FAILED BY THE FOLLOWING VOTE (3-2-0-2-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR PLN2004-00233 HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES, AND THAT THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND THE CITY COUNCIL APPROVE THE DRAFT MITIGATED NEGATIVE DECLARATION FOR PLN2004-00233, FINDING THAT IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT, AND FINDING THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND

FIND PLN2004-00233 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY’S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN’S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND PLN2004-00233 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT “A” (REZONING EXHIBIT).

The motion failed by the following vote:

AYES: 3 – Harrison, Lydon, Wieckowski
NOES: 2 – King, Sharma
ABSTAIN: 0
ABSENT: 2 – Natarajan, Weaver
RECUSE: 0

Vice-Chairperson Wieckowski announced that the applicant could appeal the decision to the City Council within ten days.

Vice-Chairperson Wieckowski called for a recess at 8:45 p.m.

Vice-Chairperson Wieckowski reconvened the meeting at 8:55 p.m.

Item 5. **ALAMEDA RESIDENCE – Clara Terrace – (PLN2004-00214)** – to consider a Planned District minor amendment and a Preliminary Grading Plan for an 8,064 square foot residence, including a detached garage, located in the Mission San Jose Planning Area. A Mitigated Negative Declaration has been previously prepared and adopted for the Planned District subdivision, which includes the anticipated development of this lot.

MODIFICATION TO STAFF REPORT (Inclusion of Condition A-12):

Condition A-12 is added to read: Prior to the roof sheathing inspection, the supervising general contractor and/or construction manager shall contact the Development Organization at 510-494-4561 for an interim inspection of the project to ensure that the construction is consistent with the approved building permit.

Kartik Patel, architect, stated that, per the Commission's request, a vicinity map had been prepared that showed the home in relation to surrounding homes. The house on Lot nine below this one was included to give an idea of massing. The front garage door was changed to two single garage doors. It was a good change and broke up the front façade. The glazing on the southeast side was reduced and reconfigured. Shifting the driveway downhill was not possible because of a culvert and easement along the property line. However, the allowable retaining wall would be maximized, along with reducing the grading, which would allow the driveway to be located at the permitted edge. Relocating the bedroom wing to above the living/dining area would have increased the mass and the visual impact. In his opinion, this architecture was modern and very different from other homes in the area. It was one of the few homes that reflected what Measure T and the Hillside Ordinances were all about.

Commissioner Harrison asked the architect to address the steep slopes, as mentioned in the staff report on page 4.

Mr. Patel replied that this building site and existing grades had been approved before his client acquired this property and the building site had been significantly flatter than it was at the present time, which was shown on paper as less than 30 percent. However, three surveys showed the site to actually be greater than 30 percent, because, at some point in time, a portion of the building envelope became, on average, 32 percent. In spite of this, the building design would not have changed, if the grade was less than 30 percent, as was originally believed.

Vice-Chairperson Wieckowski opened the public hearing and noted that no one had stepped forward to make comments.

Commissioner Harrison asked staff to comment on this project as it related to Measure T.

Planning Director Schwob replied that the architect's explanation of how the lot got to its present condition was accurate. The tentative and final maps showed the lot and developable area to be at 29.5 percent. Apparently, unauthorized grading had been performed and the lot was now steeper. The lot was of legal record and had the right to be developed.

Commissioner Harrison asked if all development should be in conformance with Measure T, but this lot was different because of the circumstances.

Senior Deputy City Attorney Seto replied that this lot was created before Measure T, so it was not required to meet the Measure's minimum lot size of 20 acres. However, all other Measure T requirements should be met to the extent practicable. Because most of the lot had a greater than 30 percent slope, the minimum amount of development that was feasible would necessarily encroach onto that 30 percent area.

Commissioner Harrison asked, "Where are we in the whole analysis of Measure T?" Public spaces were to be defined, among other things, and he asked when it might happen.

Planning Director Schwob said that staff was preparing for a work session with the City Council and the background and the Planning Commission's recommendation would be presented. Some of the Commission's requests had been fulfilled, i.e., staff had met with the Ponderosa Homeowners Association and was scheduled to meet with the Avalon Homeowners Association on September 13th, along with other interested persons. A brief meeting was held with Stephen Ho and David Yun to give them the opportunity to refine the wording of their proposal and to make certain "that we're all on the same page." The terms "appropriate landscaping", "public spaces", and "to the extent practicable" would be further refined. Before adopting any definitions into the Zoning Code, they would come back to the Commission for a recommendation, depending upon direction given by City Council.

Vice-Chairperson Wieckowski asked what the steep slope analysis would have been under Measure A. He asked if there was any portion of the lot, other than the miniscule driveway, that was buildable.

Planning Director Schwob replied that it would not have been that different, except for allowing for minor encroachments on a 30 percent slope. It was the subsequent grading after the City's approval that had caused the current situation.

Planner Nguyen replied that only the driveway portion of the lot was buildable.

Vice-Chairperson Wieckowski recalled that the applicant owned the adjacent lot and asked what percentage of it was buildable.

Planner Nguyen stated that staff did not have that information at this time. He expected to see a project shortly. When the planned district was approved, Lots 6 and 7 each showed buildable envelopes of less than 30 percent slope.

Commissioner King was prepared to approve the project, as the Commission had already heard the arguments concerning the grade of the slope and the legality of the lot. He asked for clarification of staff's recommended actions.

Planning Director Schwob replied that, because this is one of the first Measure T homes to come before the Commission and because Measure T contained challenging language that still needed to be interpreted, two recommendations had been provided. The Commission could find that the additional information from the applicant was sufficient or it could give more direction, because the full intent and spirit of Measure T may not have been met.

Commissioner King asked if “it was staff’s judgment that the applicant had done what we asked him to do?”

Planning Director Schwob stated that, in large part, they had.

Senior Deputy City Attorney Seto advised that the Commission could direct the applicant to reduce the overall size or mass of the home, because of the visual impact.

Discussion ensued concerning the direction given to the applicant during the last hearing.

Commissioner Sharma asked if it was worth waiting for the Measure T interpretation to be sorted out before the Commission made a decision.

Planning Director Schwob replied that there were always questions and interpretations concerning anything new. In the meantime, it was not fair to the applicant to hold up his project while these details were worked out.

Vice-Chairperson Wieckowski asked the applicant what the slopes were on Lot 7. What percentage of the lot had a buildable site of less than 30 percent slope? He was concerned that the law stated that no building could be done on slopes over 30 percent. He asked if both homes could be built on Lot 7 without encroaching into the 30 percent grade. How much of the two lots was usable?

Mr. Patel responded that they were very similar to Lot 8. Based on the survey, there were pockets within the allowed envelope that were greater than 30 percent but no greater than 32 percent. He guessed about 20 to 30 percent of those pockets were greater than 30 percent. He did not believe those pockets would impact the design. The entire building envelope was not over 30 percent. Each lot was ten acres. The defined building envelopes had been approved for each lot and building could not occur anywhere but within those envelopes, which were 30 feet apart. The house for Lot 6 was planned to be similar to this one, but smaller.

IT WAS MOVED (KING/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (4-1-0-2-0)
THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

**FIND PLN2004-00214 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS
CONTAINED IN THE CITY’S EXISTING GENERAL PLAN AND THE HILL AREA
INITIATIVE OF 2002, MEASURE T, AS CONDITIONED;**

AND

**APPROVE PLN2004-00214, AS SHOWN ON EXHIBIT “A”, SUBJECT TO CONDITIONS
ON EXHIBIT “B”, AND, PRELIMINARY GRADING PLAN FINDINGS AND CONDITIONS IN
EXHIBIT “C”.**

The motion carried by the following vote:

AYES:	4 – Harrison, King, Lydon, Sharma
NOES:	1 – Wieckowski
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

- Item 8. **ANNUAL REPORT ON THE GENERAL PLAN AND HOUSING ELEMENT – (PLN2005-00014)** – to consider an annual report on the status of the General Plan and Implementation of the Housing Element. This project is statutorily exempt under CEQA Guidelines Section 15262, Feasibility and Planning Studies.

MODIFICATION TO STAFF REPORT:

Modify Table 2 and two subsequent paragraphs as noted in strike-through and underline.

**TABLE 2
REVISED REGIONAL HOUSING NEED DETERMINATION 2002-2006**

HOUSEHOLD INCOME LEVEL	REGIONAL HOUSING NEED DETERMINATION (1999-2006)	UNITS ADDED TO HOUSING STOCK, 1999-2002	UNITS APPROVED / UNDER CONSTRUCTION 01/1/2002-8/12/2004	REVISED REGIONAL HOUSING NEED DETERMINATION (2002-2006)
Very Low	1,079 Units	138 Units	423 159 Units	762 Units
Low	636 Units	34 Units	408 72 Units	550 Units
Moderate	1,814 Units	13 Units	38 Units	1,763 Units
Above Moderate	3,179 Units	1,516 Units	493 Units	1,170 Units
Total	6,708 Units	1,701 Units	762 Units	4,245Units

Source: 2001-2006 Housing Element and City of Fremont Building Permit records January 1, 2002 to August 12, 2004.

In terms of very low income units, ~~479~~ 159 units have been approved or are under construction during the period since January 1, 2002. These include 30 units at Fremont Oak Gardens, 18 units at Bridgeway East, 4 units at Fremont Vista, 96 units in the Maple Square Apartments, and 11 units in the Lincoln Street Apartments. Fremont Oak Gardens, which had entitlements approved in 2003 and 2004, is now under construction and scheduled for completion in Spring of 2005. Bridgeway East, which had entitlements approved in 2003 and 2004, is now under construction and scheduled for completed in Summer of 2005. Fremont Vista was approved in 2003 and is nearly completed (September 2004). Maple Square Apartments received entitlements in 2003 and construction is scheduled to begin in October 2004.

Low income units that were approved or are under construction total ~~52~~ 72 for the period between 2002 and the present. They include Fremont Assisted Living (16 units), Fremont Oak Gardens (20 units), and Maple Street (36 units).

Delete 5th paragraph on page 9 as follows:

~~Implementing Program 38, Support for Non-Profit Affordable Housing Providers, resulted in the presentation of statuettes to Eden Housing and Habitat for Humanity in recognition of their successful development of Adams Avenue Homes. This development of Adams Avenue Homes also resulted in the Fremont Redevelopment Agency being awarded the 2004 California Redevelopment Association Award of Excellence in the Single Family Home category for Adams Avenue Homes, a 17-unit affordable housing development for first-time homebuyers constructed in the Irvington Redevelopment Project Area in Fremont.~~

Senior Planner Livermore stated that the Housing Element had 47 implementation measures and, to date, approximately 70 percent was compliant with the rezoning and redesignations. Expected actions by the Commission and City Council could allow 90 percent compliance.

Commissioner Sharma asked if secondary units could be counted toward the total units added to the City's affordable housing stock.

Planning Director Schwob stated that it was assumed that secondary units fit into the moderate-income category. Staff had discussed the leveraging some additional affordability from some of these units by assisting with development impact fees with the understanding that there would be some restriction concerning the rental charged for the secondary unit. The administration of individual secondary units was much more time consuming than when dealing with several units within a project. He expected some kind of program would be brought before the Commission, assuming redevelopment funds would be available.

Vice-Chairperson Wieckowski had received (and passed on to staff) a newspaper article from the Sacramento Bee concerning the removal of governmental constraints with regard to housing opportunities. He asked if staff had considered other ways of building secondary units and asked if an update was available of how many secondary units had been built in 2003 or 2004 or how many applications had been received.

Planning Director Schwob replied that there were no more applications, as secondary units were now approved through the Development Organization. One or two were working their way through the building permit process, but he did not think any had been completed. However, staff had noticed more interest. The development impact fees for parks had gone down, considerably, and it was another incentive because it had reduced the total impact fee burden for second units.

Vice-Chairperson Wieckowski wanted to revisit the impact fees on the secondary units because they were treated as a new home. Regarding Program 17, the Inventory of Vacant and Underutilized Land, he asked how staff planned to proceed with the evaluations that were due to be heard by the Commission in December.

Planning Director Schwob stated that a new category had been created for secondary dwelling units, which reduced the cost to that of a multifamily unit when the comprehensive update of the impact fees was done. Larger sized secondary dwelling units were also allowed. Program 10 called for a zoning combining district that would apply to properties, such as Linda Vista's, where the General Plan density range went beyond what the zoning allowed. Rather than rezone each site, staff planned to propose to the Commission in October to amend the R-1 Districts to allow developers to develop at the midpoint or higher within the density range. This would allow the Commission the discretion to work with the developer to obtain the best product for the neighborhood. The update of the vacant land inventory was planned to be finished before December.

Senior Planner Livermore stated that staff planned to bring the next group of sites to the Commission during the October 28th meeting, which were Program 18, Vacant and Underutilized Residential Land and Program 21, Vacant and Underutilized Commercial and Industrial Land and included approximately four sites in each category.

Vice-Chairperson Wieckowski recalled thinking 15 years ago that all homes would be equipped with solar by this time. Did staff have anything beyond Title 24, regarding energy conservation?

Planning Director Schwob replied that Alameda County had developed a set of design guidelines for green buildings in multifamily development, which would be presented to staff within a month or so. State legislation was being contemplated that required a percentage of new homes to be fully energy efficient and solar adapted. Staff had seen an increase for building permits for solar collectors on existing development, because an economic incentive was beginning to be seen.

Vice-Chairperson Wieckowski opened and closed the public hearing.

IT WAS MOVED (KING/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-2-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

RECOMMEND THE CITY COUNCIL FIND THE ANNUAL REPORT IS STATUTORILY EXEMPT UNDER CEQA GUIDELINES, SECTION 15262, FEASIBILITY AND PLANNING STUDIES;

AND

RECOMMEND THE CITY COUNCIL FIND THAT THE ANNUAL REPORT OF THE GENERAL PLAN AND HOUSING ELEMENT ACCURATELY DEPICTS THE CURRENT STATUS OF THE CITY OF FREMONT WITH RESPECT TO THE GENERAL PLAN AND HOUSING ELEMENT;

AND

RECOMMEND THE CITY COUNCIL FORWARD THE ANNUAL REPORT OF THE GENERAL PLAN AND HOUSING ELEMENT TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE OFFICE OF PLANNING AND RESEARCH, AS REQUIRED BY GOVERNMENT CODE SECTION 65400 (B).

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

Commissioner Lydon mentioned that while Vice-Chairperson Wieckowski had waited 30 years for solar improvements, fire sprinklers were 100 years old 30 years ago and the wait had been a little longer.

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

Vice-Chairperson Wieckowski asked if the September 9th Planning Commission meeting had been cancelled.

Planning Director Schwob replied that he was correct. On September 14th, the City Council was scheduled to hear the Durham Road service station appeal, along with hearing the Grimmer Residence. The Irvington Concept Plan should be ready to be heard by the Commission at the second meeting in October.

Vice-Chairperson Wieckowski asked the status of Cushing Parkway and the development at Pacific Commons.

Senior Deputy City Attorney Seto stated that the status of Cushing Parkway was that the project engineers were considering a possible redesign or change of the surface treatment and it was not yet open to public traffic. Other approved development had occurred in the retail areas and were “starting to go vertical” with targeted opening dates of October/November.

- Information from Commission: Commission members may report on matters of interest.

Commissioner Harrison stated that he and his wife had a previous interest in a condominium on Cherry Lane (a project on Cherry Lane was approved on consent) and they had no financial

interest at this time. He also stated that he knew that Mr. Alameda had nothing to do with the illegal grading performed on his lot. However, the Commission's approval of his home did not condone any future illegal grading that may concern any other future development in the hills.

Commissioner Harrison asked that the meeting be closed in the memory of his father, who had passed away last week.

Meeting adjourned at 10:00 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Jeff Schwob, Secretary
Planning Commission